

### **REMARKS**

This responds to the Final Office Action dated July 10, 2008.

No claims are amended. Claims 1-19 are now pending in this application.

#### **§103 Rejection of the Claims**

Claims 1-11, 16 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lindberg (U.S. Patent No. 4,270,666) in view of Von Arx (U.S. Patent No. 6,985,773) and Goedeke (U.S. Patent No. 6,263,246). Claims 12 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lindberg et al. in view of Von Arx et al. and further in view of Hauser (U.S. Patent No. 5,385,574). Claims 14, 15, 17 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lindberg et al. in view of Von Arx. and Goedeke as applied to claims 1, 16 and 18 above, and further in view of McDonald (U.S. Patent No. 4,236,522). The rejections are traversed and reconsideration is respectfully requested.

Applicant reiterates the remarks made in response to the previous Office Action. The Final Office Action states that Applicant's arguments are found unpersuasive and then conclusorily states, with no analysis, that the differences between the claimed subject matter and the prior art is obvious. Applicant does not believe that the rejections as set forth in the previous Office Action and repeated in the Final Office Action are well-founded for the reasons set forth below.

In rejecting claims 1-11, 16, and 18 under section 103 in view of the Lindberg, Von Arx, and Goedeke references, the Office Action states:

Lindberg teaches an electrogram signal sensing channel 6, one or more pacing channels C1 and 15, programmable tachyarrhythmia detection controller 4, telemetry interface 12, magnetic switch 14, and activity level sensor 6. Lindberg does not teach the following claimed limitations taught by Von Arx: disablement of a component (Col. 3 ll. 56 - Col. 4 ll. 9) and re-enablement of a component (Col. 3 ll. 12-55), disablement time interval specification via the telemetry interface (Col. 3 ll. 12-17), magnetic switch component actuation (Col. 3 ll. 32-38), and activity level component actuation (Col. 3 ll. 47-54). It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the invention of Lindberg in view of Von Arx in order to conserve energy (Col. 4 ll. 10-21). Goedeke teaches the following

claimed limitations not taught by Lindberg or Von Arx: disabling device therapy (Col. 4 ll. 49 - Col. 5 ll. 4). It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the invention of Lindberg and Von Arx in view of Goedeke in order to assist sleep (Col. 4 ll. 49 - Col. 5 ll. 4).

As Applicant understands it, the above argument is that Lindberg describes the basic components of a pacemaker, Von Arx teaches duty-cycling of the telemetry circuitry of an implantable device in which the telemetry circuitry is enabled and disabled by various means, Goedeke teaches a cardiac device in which therapy may be disabled, and the features described in these references may be combined to arrive at the recitations of claims 1-11, 16, and 18. For the reasons given below, Applicant does not believe that the teachings of the Lindberg, Von Arx, and Goedeke references constitute a *prima facie* case of obviousness under section 103.

Independent claims 1, 16, and 18 recite cardiac devices that are configured to allow disablement of the delivery of anti-tachyarrhythmia therapy by the device by a telemetry command and subsequent re-enablement of the therapy either upon expiration of a specified time interval as recited by claim 1, upon actuation of a magnetic switch as recited by claim 16, or upon measurement of an activity level by the device above a specified threshold value as recited by claim 18. The inventions recited by claims 1, 16, and 18 address the problems associated with temporarily disabling the delivery of anti-tachyarrhythmia therapy by a implantable device in situations such as during surgery where EMI may inappropriately trigger the therapy and subsequently re-enabling the anti-tachyarrhythmia therapy. Claim 1 recites that the anti-tachyarrhythmia therapy is automatically re-enabled after a specified time interval in order to ensure that the therapy will be re-enabled even if clinical personnel neglect to do so. Claim 18 recites that automatic re-enablement of anti-tachyarrhythmia therapy is effected when the device senses that the patient's activity level has reached a specified level. Claim 16 recites that the anti-tachyarrhythmia therapy may be re-enabled by a magnetic switch, thus allowing such re-enablement to take place both conveniently (e.g., if an external programmer is not immediately available) and quickly in order to deal with an emergency situation. "(A) patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007). Applicant can find no awareness of the problems addressed by these

claims in the prior art of record and thus nothing that would lead one of ordinary skill in the art to combine or modify the teachings of those references to arrive at what is claimed.

Furthermore, Applicant does not believe that the all of the elements of the claimed inventions are separately found in the cited references. Von Arx teaches enablement and re-enablement of telemetry circuitry, and Goedeke teaches disablement of anti-tachyarrhythmia therapy via telemetry. Duty cycling telemetry circuitry as taught by Von Arx is accomplished in different manners and for a different purpose (i.e., energy conservation) than disablement of therapy circuitry. Also, the prior art of record fails to show a device in which, after disablement, subsequent re-enablement of circuitry of any kind takes place upon expiration of a time interval, upon actuation of a magnetic switch, or upon sensing a specified activity level as recited by claims 1, 16, and 18.

For the reasons given above, Applicant submits that claims 1-11, 16, and 18 are patentable over the prior art of record. Applicant further believes that the recitations of dependent claims 12-15, 17, and 19 are neither taught nor suggested by the cited references in the context of their combination with the subject matter of claims 1, 16, or 18. Reconsideration and withdrawal of the rejections is respectfully requested.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (847) 432-7302 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(847) 432-7302

Date November 10, 2008

By J. Kevin Parker  
J. Kevin Parker  
Reg. No. 33,024

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 10th day of November, 2008.

Kate Gannon

\_\_\_\_\_  
Name

Kate G  
Signature